



TEXAS STATE BOARD OF DENTAL EXAMINERS

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BOARD MEETING MINUTES November 19, 2004

1. **CALL TO ORDER:** Dr. Irons called the meeting of the Texas State Board of Dental Examiners to order on August 26, 2004. The time was 8:10 a.m.
2. **ROLL CALL:** Dr. McDonald called the roll. It was noted for the record that a quorum was present.
 - a. **Members Present:**

Dr. J. Kevin Irons	Presiding Officer
Dr. Gary W. McDonald	Secretary
Mr. Oscar Garcia	Public Member
Ms. Amy Juba	Public Member
Ms. Helen McKibben, RDH	Member
Dr. Martha Malik	Member
Dr. Norman Mason	Member
Ms. Phyllis Stine	Public Member
Dr. George Strunk	Member
Dr. Paul Stubbs	Member
Dr. Nathaniel Tippit	Member
Dr. Juan Villarreal	Member
Mr. Charles Wetherbee	Public Member
 - b. **Members Absent:**

Ms. Tammy Allen, RDH	Member (Excused)
Ms. Marti Morgan	Public Member (Excused)
 - c. **TSBDE Staff Present:**

Mr. Bobby D. Schmidt, M.Ed.	Executive Director
Mr. Ben Ablon	Director of Enforcement
Mr. Fread Houston	General Counsel
Ms. Carol McPherson	Director of Administration, Finance and Personnel
Ms. Sherri Sanders	Director of Licensing and Examinations
Ms. Heather Fritz	Attorney
Mr. Rob Hill	Attorney
Ms. Vicki Shoesmith	Executive Assistant

d. Others Present:

Mr. Bob Hull	Professional Recovery Network
Ms. Holly Johnston	Professional Recovery Network
Dr. Patricia Blanton	Texas Dental Association
Mr. Jay Bond	Texas Dental Association
Dr. Robert Zoch	Texas Dental Association
Ms. Rebecca Fontenot	Texas Dental Hygienists' Association
Ms. Kirsten McGee	Texas Dental Hygienists' Association
Ms. Lois Palermo	Texas Dental Hygienists' Association
Dr. Mark Schrieffer	Public Guest

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO EXCUSE MS. ALLEN AND MS. MORGAN, FROM THE MEETING. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

3. REVIEW AND APPROVAL OF PAST MINUTES.

Dr. Irons entertained a motion to approve the Minutes of the August 27, 2004 Meeting of the Texas State Board of Dental Examiners with the following changes:

- Page 3, Last Paragraph, Line 4, Change “downtown” to “downtime.”
- Page 12, Paragraph 8b(1), Line 4, Change “end of the fiscal year” to “currently during the Fiscal Year”
- Page 17, Case Number 03-637-0416. Change the paragraph to read: “Mr. Nieto further stated that the Respondent had admitted engaging in recreational use of marijuana within 2003. The language was changed upon recommended of the panel at the Settlement Conference held in June 2004. The Proposed Board Order reflected the change of language.”

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY DR. MASON TO APPROVE THE MINUTES AS AMENDED FROM THE AUGUST 27, 2004 MEETING. (FOR - 12 / OPPOSED - 0) MOTION CARRIES.

4. APPEARANCES BEFORE THE BOARD.**a. Dr. Gary Ward, License Number 11705, Request for Modification to Board Order 90-441.**

Mr. Houston stated that Dr. Ward has sent in a request to respectfully withdraw his consideration of modification of his Board Order.

b. Dr. John Schoonover, License Number 15873, Request for Modification to Board Order 98-449-0527FW.

Mr. Houston stated that Dr. Schoonover has completed his Board Order effective June 2001 and is now seeking to have his prescription privileges. Dr. Schoonover is unable to appear due to a family function; however, he has faxed a his request.

A MOTION WAS MADE BY DR. VILLARREAL, SECONDED BY MR. WETHERBEE TO APPROVE THE REQUEST OF DR. JOHN SCHOONOVER TO MODIFY BOARD ORDER 98-449-0527FW. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

5. COMMITTEE REPORTS.

a. Enforcement Committee Report.

Dr. McDonald reported that the Enforcement Committee met on November 18, 2004 and approved proposed language changes to Rules 107.101(c), 107.102(c) and Rule 108.6 which will be addressed in the Rules Section of this Meeting's Agenda.

b. Executive Committee Report.

Dr. Irons reported that the Executive Committee met on November 18, 2004 to discuss and consider action regarding policies and guidelines for the Peer Assistance Program (Professional Recovery Network).

Dr. Irons provided the Board a copy of the approved Peer Assistance Program Guide. A copy of this Guide has been provided to Mr. Hull, Director of the Professional Recovery Network.

Dr. Irons thanked Mr. Ablon and Dr. Strunk for their efforts in developing this guide.

c. Government Relations Committee Report.

Ms. Juba reported that the Government Relations Committee (formerly Legislative Committee) convened on November 18, 2004 and recapped the Dental Board's needs as the 79th Legislative Session approaches. She stated that the main issue for the Dental Board is the parity of compensation for staff positions.

Ms. Juba reported that Dr. Irons and Mr. Schmidt attended the Legislative Communications Conference for the 79th Legislative Session recently and encouraged Board Members to attend this conference in the future if possible. She further added that the handouts provided at this conference were extremely helpful in establishing a timeline of events. Ms. Juba stated that discussion is on-going regarding the addition of another Board Meeting during even-numbered, or Legislative years.

Ms. Juba stated she would be e-mailing Board Members requesting information regarding their legislative contacts and relationships. She also asked Board Members to share discussions they have with legislators with her and Agency staff so continuity can be maintained and a coordinated front be presented.

d. Medicaid Fraud Ad-Hoc Committee Report.

Dr. McDonald reported that this Committee continues to stand ready to move when the Governor's office is prepared to initiate further action.

e. Remediation Ad-Hoc Committee Report.

Dr. Tippit reported that this Committee convened on November 18, 2004 to discuss and consider the development of a policy and rule requiring remedial training for applicants who fail regional clinical examination. He also reported that the proposed amendments to Rules 102.1(e), 103.1(h), and 103.2 were approved by the Committee and will be presented to the Board for approval at this meeting.

Dr. Tippit stated that it was decided that if an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete eighty (80) hours of clinical remediation through a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) before approval will be issued to take another clinical examination.

Dr. Tippit further stated that if an applicant fails four or more general dentistry clinical examination attempts, the applicant will be required to complete one of the following before approval will be issued to take another clinical examination: 1) The repetition of the 4th year of an undergraduate clinical program; or, 2) A clinical remediation

course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours. He further requested that the Board approve the Committee's recommendation to appoint the Board Secretary to serve as approval authority on undergraduate clinical programs.

f. American Association of Dental Examiners (AADE) and Western Regional Examining Board (WREB) Reports.

Dr. Malik reported on state presentations given at the AADE Meeting regarding Access to Care, Medicaid Participants, History of Licensure, and State Board Set-Up to mention a few. Statistical information from this meeting is available by seeing Dr. Malik.

Dr. Malik stated that AADE considered changing its name to the Federation of American Boards however, this action did not pass. In July 2004, AADE stated their interest in having a national clinical exam and as WREB representatives attended meetings it appeared that the test had been partially developed. AADE's next meeting was held in August where participants were asked to sign a "Non-Compete Agreement" before the test was completed. It was at this time that WREB did not feel they could participate and declined to attend. In September, WREB held an Emergency Board Meeting to discuss this matter further and it was felt that development of the exam thus far was not psychometrically sound, and wasn't legally defensible and therefore WREB voted not participate in this venture.

AADE is now asking for financial support from Boards and Regional Boards. Historically, the four major regional boards have contributed to this Committee and in January 2004, WREB decided to no longer contribute because its questions, comments, and suggestions were not being acknowledged or responded to. Dr. Malik stated that in the event AADE falls short in funding this examination, the cost of the exam will go up for candidates. She further stated that it's rumored that ADA has been asked to assist in funding. The American Dental Education Association (ADEA) was not asked to participate in this venture and felt they were also not being listened to.

Dr. Malik stated that WREB feels this process is moving too fast, that WREB does support a clinical national exam, but one that is psychometrically sound, legally defensible and is a result of some type of new examining technology.

Dr. Strunk asked if this national clinical exam were to take place, what would the status of the other regional exams be?

Dr. Malik responded that it will depend on what the individual states accept. There are 53 entities and 11 have said they are not going to accept it. She also stated that should this program be implemented that Texas would most likely be welcomed with open arms at any time.

Dr. Malik reported that California now accepts WREB exams but has not joined to date.

h. WREB Exam Review Committee (ERC) RDH Report.

Ms. McKibben reported on the documentation provided to Board Members (listed below) and briefly shared that the Dental Hygiene (DH) ERC is tasked to retool and make suggestions pertaining to the Dental Hygiene Exam. Feedback and suggestions are forwarded to the Board of Directors for further action. She invited Board Members to speak with her if they have any questions. Documentation provided: DH-ERC Subcommittee Report, July 9-11, 2004; DH-ERC Meeting Minutes, July 14, 2004; WREB Letter dated July 23, 2004 to DH-ERC, Subject: Board of Directors Meeting; DH-ERC Meeting Minutes, September 24-26, 2004; DH-ERC Director Letter, dated October 13, 2004, Subject: AADE Annual Meeting of September 29-30, 2004; and the 2004 DH-ERC Membership Roster.

6. OTHER REPORTS.

a. Enforcement Database Report.

Dr. McDonald reported that the Enforcement Database implementation date has been rescheduled due to the unforeseen illness of the developer and the upcoming holiday season. It is anticipated that it will be up and running after the first of the year and a comprehensive report and/or presentation be provided to the Board at the April 2005 Meeting.

b. Professional Recovery Network (PRN) Report.

Mr. Bob Hull and Ms. Holly Johnson, representing the PRN, provided their End-Of-Year Progress Report as reflected below.

Licensees	1 st Quarter			2 nd Quarter			3 rd Quarter			4 th Quarter		
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug
Dentists												
Board Ordered	20	20	20	20	21	19	18	19	19	12	13	14
Volunteer	0	8	8	8	8	8	9	9	10	11	12	10
Total	20	28	28	28	29	27	27	28	29	23	25	24
Dental Hygienists												
Board Ordered	3	3	3	3	3	3	3	3	3	3	3	2
Volunteer	0	1	1	1	2	2	1	1	1	1	1	1
Total	3	4	4	4	5	5	4	4	4	4	4	3
<u>Students & Assistants</u>												
Dental Students	0	0	0	0	0	0	0	0	0	0	0	0
Hygienist Students	0	0	0	0	0	0	0	0	0	0	0	0
Dental Assistants	0	0	0	0	0	0	1	1	1	1	0	0
Total	0	0	0	0	0	0	1	1	1	1	0	0
Grand Total	23	32	32	32	34	32	32	33	34	28	29	27

Current Board Order Participants:

- At this time there are 24 Board Ordered Dental Professionals in compliance with Recovery Support Agreement.

Current Volunteer Participants:

- One Dentist left Talbot Recovery Campus against medical advice.
- Three dentists are in long term treatment at the following facilities: Talbot Recovery Campus, The Williamsburg Place-The William Farley Center and Hazelden Springbrook.

Inactive Participants:

- Two volunteers withdrew from monitoring by PRN and have been placed on inactive status. One recently had his investigation closed by the TSBDE.

Relapses:

- There is one volunteer relapse. As yet we have not been successful in getting this individual to return to inpatient treatment; however, we are working with this person to re-stabilize their recovery. We have added a professional meeting to increase drug screens to weekly for six weeks. We do not believe the public is in any danger.
- Follow-up continues with other participants.

Activities:

- **Dallas Regional Meeting:**
 - Five dental professionals attended this meeting which was held on July 6, 2004.
- **Fall Meeting and Continuing Education:**
 - This meeting was held on September 19, 2004 at the Hilton Hotel North.
- **Marketing Mail-Out:**
 - Mailed 10,000+ introductory letters to dentists. Hygienists letters will go out after the first of the year.
 - A mailing will be sent to Deans of the Schools of Hygiene in Texas with site visits planned next year.
- **Continuing Education:**
 - The East Texas Education Fair was held at the Woodlands on October 8-10, 2004. PRN will hold a Regional Continuing Education (CE) Program/Meeting for dentists: Tyler, Houston, Beaumont, and Galveston on Friday, October 8, 2004, from 6:00 – 9:30 p.m.
 - The West Texas Education Fair was held in El Paso on November 5-7, 2004. PRN will have a Regional CE Program for dentists and pharmacists on Friday, November 5, 2004, from 6:00 – 9:30 p.m.
- **Athena Software Implementation:**
 - PRN is installing new software called Athena which has been in development during the last three years. This program should be fully functional by the end of 2004. This software includes a series of alerts that will assist PRN staff in intervening with participants that present with signs of possible relapse. The PRN will also collect data for research purposes with this software as well.

Dr. Strunk asked Mr. Hull to delineate the number of Compelled Volunteers in his future reports. He also asked if the two inactive volunteers who left the program were Compelled Volunteers.

Mr. Hull responded that he will look into the two inactive dentists and let Dr. Strunk know as soon as possible.

Ms. McKibben asked Mr. Hull to state the basis of his statement, “We do not believe the public is in any danger,” listed in the Relapse section of his report.

Mr. Hull responded that he bases that statement on knowledge of the individual and information PRN maintains on the individual and that they are not practicing or using.

Dr. Villarreal asked what happens to an individual who volunteers for the program, relapses while practicing dentistry and does not come back to the program.

Mr. Hull responded that PRN does its best to monitor volunteers providing they stay in the program and that PRN does not record them.

Dr. Irons asked Mr. Hull how PRN chooses its Long Term Care facilities and where they are located.

Mr. Hull responded that PRN currently uses the Talbot Recovery Campus in Atlanta, Georgia, The Williamsburg Place-The William Farley Center, Williamsburg, VA, the Palmetto Addiction Recovery Center in Rayville, LA, and Hazelden in Center City, MN and Newberg, OR.

Dr. Irons asked if there were any facilities PRN uses in the State of Texas.

Mr. Hull responded that there are no long-term treatment facilities in Texas and long-term is defined as 90-days or more. He also stated that sources report short-term treatment are of little value to the licensed professional.

Dr. Irons stated that family members are an important part of this process and asked Mr. Hull if there has been any significant financial problem faced by families.

Mr. Hull stated that sometimes there are financial burdens. PRN tries to utilize out-patient treatment facilities Houston, San Antonio, Dallas and Grapevine. If the problem is not severe enough, and the evaluator thinks that out-patient treatment would be sufficient, then PRN will go that route if the individual lives in either of those four areas. If the individual doesn't live in those area then PRN will work with the individual to find another facility.

c. Dental Hygiene Advisory Committee Report.

Mr. Schmidt presented the Dental Hygiene Advisory Committee Report on behalf of Ms. Sosa and Ms. Cornett who were unable to attend the meeting.

The Dental Hygiene Advisory Committee met on Friday, October 22, 2004 at 1:00 p.m. and discussed the Proposed Amendment to Rule 102.1 – Fee Schedule. The rule considered increasing the current fees for licensure (Dentist, Dental Hygienist and Dental Assistants).

The Committee spent time discussing the Non-Laser bleaching process by a dental hygienist. A short video on the application of laser technology by KaVo Diagnodent was presented to the Committee.

The Committee discussed and unanimously supported the recommendation of Renee Cornett to serve as the new WREB Examiner for the FY 05-06.

Ms. Jeannie Sosa was elected by the Committee to serve as the Chair for the Dental Hygiene Advisory Committee.

7. DISCUSSION AND POSSIBLE ACTION ON DHAC RECOMMENDATIONS FOR TEXAS DENTAL HYGIENE WREB EXAMINERS FOR FY 2004-2005.

The Dental Hygiene Advisory Committee presented the following names of individuals to serve in FY 04-05:

Ms. Tammy Allen, R.D.H.
Ms. Cheryl Burke, R.D.H.
Ms. Lisa Cooper, R.D.H.
Ms. Renee Cornett, R.D.H.
Ms. Lana Crawford, R.D.H.

Ms. Tammy Fisher, R.D.H.
Ms. Carolyn Jackson, R.D.H.
Ms. Helen McKibben, R.D.H.
Ms. Laurie Miller, R.D.H.
Ms. Jeanie Sosa, R.D.H.

Ms. Renee Cornett, R.D.H. will be replacing Ms. Gloria Zacek, R.D.H. who has a leadership role in WREB and has served as a WREB Examiner with the longest tenure.

A MOTION WAS MADE BY MS. MCKIBBEN, SECONDED BY MR. WETHERBEE TO ACCEPT THE LIST OF RECOMMENDED DENTAL HYGIENE WREB EXAMINERS FOR FY 2004-2005 AND FORWARD TO WREB FOR IMPLEMENTATION.

The Presiding Officer called for a recess at 9:23 a.m. The Board resumed business at 9:38 a.m.

8. RULES.

a. Discuss and Consider Proposed New Chapter 100 – General Provisions.

Mr. Hill reported the following on the Proposed New Chapter 100:

The amendments are proposed to provide rules governing basic operations of the Board, pursuant to the recommendation of the Texas Sunset Advisory Commission.

- Rule 100.1** “Introduction,” defines the name, location, legal authority, composition, and fiscal year of the Board.
- Rule 100.2** delineates the purpose and functions of the Board, as mandated by the Dental Practice Act.
- Rule 100.3** describes the organization and structure of the Board, pursuant to the Dental Practice Act.
- Rule 100.4** describes the officers of the Board.
- Rule 100.5** provides guidelines and requirements for Board meetings.
- Rule 100.10** describes the powers and responsibilities of the executive director.
- Rule 100.20** discusses final board decisions in contested cases.

Chapter 100. General Provisions.**100.1. Introduction.**

- (a) Name. The State Board of Dental Examiners, referred to as the “board”, is a decision-making board appointed by the governor of the State of Texas in compliance with Chapter 252 of the Occupations Code, and the Texas Constitution.
- (b) Location. The administrative offices shall be located in Austin, Texas.
- (c) Legal authority. The board is established pursuant to Occupations Code, Chapter 252.
- (d) Composition. The board shall be composed of those persons appointed by the Governor with the advice and consent of the senate.
- (e) Fiscal year. For all fiscal and administrative purposes, the reporting year of the board shall be identical to that of the State of Texas.

100.2. Purpose and Functions.

- (a) Purpose. The purpose of the board is to safeguard the health and safety of Texans by developing and maintaining programs to:
 - (1) Ensure that only qualified persons are licensed to provide dental care; and
 - (2) Ensure that violators of law and rules regulating dentistry are appropriately sanctioned.
- (b) Functions. The board shall perform the following functions, as outlined in Occupations Code, Chapter 254:
 - (1) Establish standards of dental practice and regulate the practice of dentistry;
 - (2) Interpret and enforce the Dental Practice Act and other statutes relating to the practice of dentistry, and implement the Act’s intent through the promulgation and enforcement of rules, as necessary to protect the public health and safety;
 - (3) Receive complaints and investigate possible violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules;
 - (4) Discipline licensees for violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules through appropriate legal action;
 - (5) Investigate infection control in the dental profession and adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety;
 - (6) Adopt and enforce rules placing reasonable restrictions on advertising relating to the practice of dentistry;
 - (7) Adopt rules to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment;

100.3. Organization and Structure.

- (a) General. The board shall consist of 15 members appointed by the governor with the advice and consent of the senate, as follows:
 - (1) eight reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;
 - (2) two reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and,
 - (3) five members who represent the public.
- (b) Privileges of office. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.
- (c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may serve only one six-year term.
- (d) Eligibility. Refer to Occupations Code Section 252.002.
- (e) Membership and employee restrictions. Refer to Occupations Code Section 252.003.
- (f) Compensation. Each member of the board is entitled to receive a per diem set by legislative appropriation for each day the member engages in board business, and may receive reimbursement for travel expenses in accordance with the travel policies of the state of Texas and the Board of Dental Examiners.

100.4. Officers.

- (a) Presiding officer.
 - (1) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.
 - (2) The presiding officer must be a dentist.
 - (3) The presiding officer shall:
 - (A) Preside over all meetings of the board;
 - (B) Represent the board in legislative matters and in meetings with related groups;
 - (C) Appoint standing, ad hoc, and advisory committees;
 - (D) Perform other such duties as pertain to the position of presiding officer; and,
 - (E) Designate a member of the board to coordinate the annual performance reviews of the executive director and evaluation of the agency.
- (b) Secretary. The board shall elect a secretary from its members to serve for a one-year term.

100.5. Meetings.

- (a) Frequency and location. The board shall hold meetings at least twice a year at times and places the board determines.
- (b) Agenda. An agenda for each meeting shall be posted in accordance with the Open Meetings Act and copies shall be sent to each board member.
- (c) Quorum. A majority of the members of the board shall constitute a quorum for the transaction of all business at any regular or special meeting.
- (d) Voting. The board may act only by majority vote of its members present and voting, with each member entitled to one vote, unless a conflict of interest exists.
- (e) Presiding officer. In the absence of the appointed presiding officer, the secretary shall act as presiding officer. In the absence of both the appointed presiding officer and the secretary, an acting presiding officer shall be chosen by a majority of the board members present, to preside over that meeting only.
- (f) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the protocols contained in Robert's Rules of Order Newly Revised.
- (g) Minutes. Minutes of all board meetings shall be prepared and supplied to board members for their review at or prior to the next subsequent board meeting, and shall be filed with the Legislative Reference Library and the Texas State Library.

100.10. Executive Director.

- (a) The board may determine qualifications for and retain an executive director who shall be the chief executive officer of the agency.
- (b) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the agency, the executive director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the Dental Practice Act, board rules and policies, the board's mission and strategic plan.
- (c) The executive director shall attend all meetings of the board and may offer recommendations to the board, but shall not vote on matters brought before the board.
- (d) The executive director, with the board's consent, may employ an assistant executive director to perform the executive director's duties when the executive director is absent or unable to act.

100.20. Final Board Decisions in Contested Cases.

- (a) The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act.
- (b) The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations.
- (c) Sanctions should be consistent with sanctions imposed in similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law.
- (d) This section shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

A MOTION WAS MADE BY MS. JUBA, AND SECONDED BY DR. MCDONALD TO APPROVE PROPOSED NEW CHAPTER 100 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

b. Discuss and Consider Proposed Amendments to Rule 101.2 – Licensure by Examination.

Mr. Hill reported that the amendments to Rule 101.2 are proposed to establish standards for reexamination, as required by Occupations Code Section 256.006. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Mr. Hill also reported that Subsection (e) has been added to establish remediation requirements for applicants for Texas dental licensure that fail three general dentistry clinical examination attempts, and another elevated level of requirements for those that fail four or more attempts. The section as amended also requires that all programs of remediation be approved in advance by the SBDE, and that reexamination be accomplished within 18 months of the approval of a program of remediation for the applicant.

101.2. Licensure by Examination.

- (a) In addition to the general qualifications for licensure contained in 101.1 of this chapter, an applicant for licensure by examination who is a graduate of an accredited school must present proof that the applicant:
 - (1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) Has taken and passed the examination for dentists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations; and,
 - (3) Has taken and passed in its entirety the appropriate general dentistry clinical examination administered by a regional examining board designated by the SBDE.
- (b) In addition to the general qualifications for licensure contained in Rule 101.1 of this chapter, an applicant for licensure by examination who is a graduate of a non-accredited school must present proof that the applicant:
 - (1) Has graduated from a dental school that is not accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) Has successfully completed training in an American Dental Association-approved specialty in an education program that is accredited by the Commission on Dental Accreditation and that consists of at least two years of training as specified by the Council on Dental Education;
 - (3) Has taken and passed the examination for dentists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations; and,
 - (4) Has taken and passed in its entirety the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board. Many regional testing boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the SBDE.
- (c) Licensure by specialty examination. Applicants for licensure by specialty examination must present proof that the applicant:
 - (1) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional testing service;
 - (2) Has taken and passed a specialty examination administered by a regional examining board designated by the SBDE. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the SBDE; and,
 - (3) Has either:
 - (A) successfully completed training in an American Dental Association-approved specialty in an education program that is accredited by the Commission on Dental Accreditation of the American Dental Association; or
 - (B) been currently or previously certified as "Board Eligible" by an American Dental Association-approved specialty board.
- (d) Designated regional examining boards.
 - (1) The following regional examining boards have been designated as acceptable by the SBDE as of the effective dates shown:
 - (A) Western Regional Examining Board, January 1, 1994;
 - (B) Central Regional Dental Testing Service, January 1, 2002;
 - (C) Northeast Regional Board, January 1, 2005;
 - (D) Southern Regional Testing Agency, January 1, 2005; and,
 - (2) Examination results will be accepted for five years from the date of the examination.
 - (3) Only results from examinations taken after the indicated acceptance date will be accepted.

(e) Remediation.

- (1) If an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete eighty (80) hours of clinical remediation through a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) before approval will be issued to take another clinical examination.
- (2) If an applicant fails four or more general dentistry clinical examination attempts, the applicant will be required to complete one of the following before approval will be issued to take another clinical examination:
 - (A) the repetition of the 4th year of an undergraduate clinical program; or,
 - (B) a clinical remediation course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours.
- (3) All programs of clinical remediation require prior approval by the SBDE. Applicants will be responsible for locating, identifying and obtaining approval from the SBDE prior to registration for any program.
- (4) Re-examination must be accomplished within 18 months following the date the SBDE approves a remediation program for the applicant.

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. VILLARREAL TO APPROVE PROPOSED AMENDMENTS TO RULE 101.2 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

c. Discuss and Consider Proposed Amendments to Rule 103.1 – General Qualification for Licensure.

Mr. Hill reported that the amendments are proposed to clarify and standardize language, and to improve organization. The proposed amendment would specifically remove subsection (g), which addresses designated regional examining boards. There is a concurrent proposal to amend 22 TAC Chapter 103, Rule 103.2, which addresses licensure by examination, to relocate the language of this subsection.

103.1. General Qualifications for Licensure.

- (a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the Texas State Board of Dental Examiners (SBDE) as required by law.
- (b) Any applicant for licensure under this chapter must meet the requirements of this section.
- (c) To be eligible for licensure, an applicant must present on or accompanying a form approved by the SBDE proof satisfactory to the SBDE that the applicant:
 - (1) Is at least 18 years of age;
 - (2) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);
 - (3) Has graduated from a recognized dental school or college of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the SBDE with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a recognized school or college of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board with a degree in dental hygiene;
 - (4) Has taken and passed the examination for dental hygienists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations;
 - (5) Has successfully completed a current course in basic life support;
 - (6) Has taken and passed the jurisprudence examination administered by the SBDE or an entity designated by the SBDE within one year immediately prior to application; and,
 - (7) Has paid all application, examination and licensing fees required by law and SBDE rules and regulations.
- (d) Applications for licensure must be delivered to the office of the State Board of Dental Examiners.
- (e) An application for licensure is filed with the SBDE when it is actually received, date-stamped, and logged-in by the SBDE along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.
- (f) In the event an applicant is uncertain whether he/she is qualified according to rule and law for licensure as a dental hygienist, prior to taking the clinical examination a written request may be submitted by the applicant with all proof required other than clinical examination scores. The SBDE will review the information and advise the applicant whether he or she is qualified for licensure pending successful completion of the clinical examination. The qualifying clinical examination must be taken within one year of the date of being so advised by the SBDE.

A MOTION WAS MADE BY DR. MASON, SECONDED BY DR. STUBBS TO APPROVE AMENDMENTS TO RULE 103.1 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

d. Discuss and Consider Proposed Amendments to Rule 103.2 – Licensure by Examination.

Mr. Hill reported that the amendments are proposed to establish standards for reexamination, as required by Occupations Code Section 256.006. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Subsection (b) has been added to accommodate the relocation of language concerning designated regional examining boards, that currently resides in Rule 103.1. That language would more appropriately be located in Rule 103.2. No changes were made to the language itself.

Subsection (c) has been added to establish remediation requirements for applicants for Texas dental hygienist licensure that fail three general dentistry clinical examination attempts, and another elevated level of requirements for those that fail four or more attempts. The section as amended also requires that all programs of remediation be approved in advance by the SBDE, and that reexamination be accomplished within 18 months of the approval of a program of remediation for the applicant.

103.2. Licensure by Examination.

- (a) In addition to the general qualifications for licensure contained in Rule 103.1 of this chapter, an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed in its entirety the appropriate clinical examination administered by a regional examining board designated by the SBDE.
- (b) Designated regional examining boards.
 - (1) The following regional examining boards have been designated as acceptable by the State Board of Dental Examiners as of the effective dates shown:
 - (A) Western Regional Examining Board, January 1, 1994;
 - (B) Central Regional Dental Testing Service, January 1, 2002;
 - (C) Northeast Regional Board, January 1, 2005;
 - (D) Southern Regional Testing Agency, January 1, 2005; and,
 - (2) Examination results will be accepted for five years from the date of the examination.
 - (3) Only results from examinations taken after the indicated acceptance date will be accepted.
- (c) Remediation.
 - (1) If an applicant for Texas dental hygienist licensure fails three dental hygiene clinical examination attempts, the applicant must complete forty (40) hours of clinical remediation through a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) before approval will be issued to take another clinical examination.
 - (2) If an applicant fails four or more dental hygiene clinical examination attempts, the applicant must complete eighty (80) hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.
 - (3) All programs of clinical remediation require prior approval by the SBDE. Applicants will be responsible for locating, identifying and obtaining approval from the SBDE prior to registration for any program.
 - (4) Reexamination must be accomplished within 18 months following the date the SBDE approves a remediation program for the applicant.

A MOTION WAS MADE BY DR. MASON, SECONDED BY DR. TIPPIT TO APPROVE THE PROPOSED AMENDMENTS TO RULE 103.2 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

e. Discuss and Consider Proposed Amendments to Rule 107.101(c) – Guidelines for the Conduct of Investigation.

Mr. Hill reported that the amendments to Rule 107.101(c) are proposed to alter the process by which investigations are tracked for possible consideration of emergency suspension proceedings. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Subsection (c) currently requires the director of enforcement to determine “upon receipt” of a complaint whether temporary suspension of the licensee should be considered. The language as amended would allow that determination to be made at any point in an investigation of a complaint. This would allow for that determination to be

made with the benefit of some level of supporting evidence. The proposed amendment also links this determination to the next steps of the temporary emergency suspension process, by reference to Rule 107.102(c).

107.101. Guidelines for the Conduct of Investigation.

- (a) Every complaint shall be classified into one or more of the following categories:
 - (1) Quality of Care: failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.
 - (2) Sanitation: failure to maintain the dental office in a sanitary condition.
 - (3) Professional Conduct: violations arising out of the day-to-day practice of dentistry, not including administrative requirements.
 - (4) Administration: failure to follow the administrative requirements of the Dental Practice Act/and or the board's rules and regulations.
 - (5) Dental Laboratories: violations of the Dental Practice Act and/or the board's rules and regulations pertaining to the operation of dental laboratories.
 - (6) Business Promotion: violations arising out of efforts to obtain business, such as advertising and referral schemes.
- (b) Every complaint shall be assigned a priority classification. Priority 1 represents more serious allegations of violations, including Patient Mortality, Patient Morbidity, Practicing Without a License, and Sanitation. Priority 2 represents less serious threats to the public welfare, including records-keeping violations and Advertising.
- (c) Every investigation shall be evaluated by the director of enforcement to determine whether or not temporary suspension, in compliance with the Occupations Code, Chapter 263, Section 263.004 should be considered, in accordance with 107.102(c).

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. STUBBS TO APPROVE THE PROPOSED AMENDMENTS TO RULE 107.101(C) AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

f. Discuss and Consider Adopting Amendments to Rule 107.102(c) – Procedures in Conducting of Investigation.

Mr. Hill reported that the amendments to Rule 107.102(c) are proposed to alter the process by which investigations are submitted for possible consideration of emergency suspension proceedings. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Mr. Hill also reported that the proposed amendments to subsection (c) would allow for the referral of a case for consideration of emergency temporary suspension proceedings at any point in the investigation, rather than upon the initial review, as mandated by the current language. He further stated that the proposed amendment also changes the standard for consideration of such cases from “possible threat” to the more specific “imminent threat”, which more accurately mirrors the “clear, imminent, or continuing threat” requirement of Occupations Code, Chapter 263, Section 263.004.

Mr. Hill concluded his report stating that the proposed amendment routes those cases in which the investigation has revealed an imminent threat to the executive director, who then determines whether or not the case should be referred to the chairperson of the executive committee of the board, which ultimately bears the responsibility under Occupations Code, Chapter 263, Section 263.004 of determining whether or not to temporarily suspend the license involved. The introduction of this intermediate step would help to ensure proper controls over the use and efficacy of temporary emergency suspensions.

107.102. Procedures in Conduct of Investigation.

- (a) An investigative file accounting for each complaint filed with the SBDE shall be maintained under the supervision of the director of enforcement.
- (b) Every complaint shall be reviewed by the director of enforcement to determine jurisdiction. If jurisdiction exists, a complaint shall be investigated to determine the facts concerning the complaint. All investigators shall be state employees.

- (c) If, upon review, the investigation reveals an imminent threat to a person's welfare, the case shall be referred to the executive director, who shall determine whether or not to refer the case to the chairperson of the executive committee of the board for consideration of temporary suspension, pursuant to the Occupations Code, Chapter 263, Section 263.004.
- (d) – (j) (No change.)

A MOTION WAS MADE BY MR. GARCIA, SECONDED BY MR. WETHERBEE TO APPROVE THE PROPOSED AMENDMENTS TO RULE 107.102 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

g. Discuss and Consider Proposed Amendments to Rule 108.6 – Report of Patient Death or Injury Requiring Hospitalization.

Mr. Hill reported that the amendments to Rule 108.6 are proposed to more clearly delineate what patient hospitalizations must be reported by a dentist. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Mr. Hill further stated that the section as amended defines hospitalization as “an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring.” The proposed language also allows for reporting within 30 days of such time as the dentist becomes aware or reasonably should have become aware of a qualifying hospitalization, to address instances in which the dentist has no knowledge of a patient’s hospitalization.

108.6. Report of Patient Death or Injury Requiring Hospitalization.

A dentist must submit a written report to the SBDE as provided below:

- (1) The death of a dental patient which may have occurred as a consequence of the receipt of dental services from the reporting dentist must be reported within 72 hours of the death, or such time as the dentist becomes aware or reasonably should have become aware of the death;
- (2) The hospitalization of a dental patient, as a possible consequence of receiving dental services from the reporting dentist, must be reported within 30 days of the hospitalization or such time as the dentist becomes aware of or reasonably should have become aware of the hospitalization. For purposes of this section, “hospitalization” shall be defined as an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring.
- (3) In the evaluation of sedation/anesthesia morbidity or mortality, the SBDE shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY DR. STRUNK TO APPROVE AMENDMENTS TO RULE 108.6 AND DIRECT STAFF TO PUBLISH IN THE TEXAS REGISTER. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

h. Discuss and Consider Proposed Amendments to Rule 102.1 – Fee Schedule.

Mr. Hill reported that this rule will be reviewed by DHAC at its next meeting and will return before the Board for adoption at its April 2005 Meeting.

9. DIVISION REPORTS.

a. Licensing Division.

(1) Discuss and Consider Approval of Parenteral Anesthesia Permit Applications.

Dr. McDonald reported that 11 practitioners have submitted Parenteral Anesthesia Permit Applications. The qualifications and credentialing of these individuals have been ascertained and submit a motion that these permits be granted.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STRUNK TO APPROVE 11 PARENTERAL ANESTHESIA PERMIT APPLICATIONS. (FOR – 12 / OPPOSED – 0) MOTION CARRIES

(2) Discuss and Consider of the General Anesthesia Permit Application of Dr. Stephen Evans.

Dr. McDonald stated that in researching the nature of Dr. Evans' training it was felt that the program he participated in did not rise to the level of the ADA teaching guidelines in Analgesia and Sedation; therefore, it was decided that this individual did not meet our criteria to be given this permit.

A MOTION BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO DENY THE APPLICATION OF DR. STEPHEN EVANS. (FOR – 12 / OPPOSED – 0) MOTION CARRIES

(3) Discuss and Consider Approval of Nitrous Oxide Permit Applications.

Dr. McDonald reported that 55 practitioners have submitted Nitrous Oxide Permit Applications. These applications have been reviewed by him and Staff and are hereby being submitted to the Board for approval.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STUBBS TO APPROVE 55 NITROUS OXIDE PERMIT APPLICATIONS. (FOR – 12 / OPPOSED – 0) MOTION CARRIES

(4) Discuss and Consider Approval of Enteral Conscious Sedation Permit Applications.

Dr. McDonald reported that 68 Enteral Conscious Sedation Permit applications. These applications have been reviewed by him and Staff and have been found to meet the criteria and credentialing necessary for permitting.

A MOTION BY DR. MCDONALD, SECONDED BY DR. STRUNK TO APPROVE 68 ENTERAL CONSCIOUS SEDATION PERMIT APPLICATIONS. (FOR – 12 / OPPOSED – 0) MOTION CARRIES

(5) Licensing Division 4th Quarter Report.

Ms. Sanders reported the following for the 4th Quarter:

	<u>4th Quarter</u>	<u>Fiscal Year Total</u>
<u>New Licenses/Registrations</u>		
Dental Total	257	455
<i>by examination</i>	<i>(201)</i>	<i>(348)</i>
<i>by credentials</i>	<i>(24)</i>	<i>(64)</i>
<i>faculty</i>	<i>(32)</i>	<i>(43)</i>
Dental Hygienist Total	289	472
<i>by examination</i>	<i>(269)</i>	<i>(423)</i>
<i>by credentials</i>	<i>(16)</i>	<i>(47)</i>
<i>faculty</i>	<i>(4)</i>	<i>(4)</i>
Dental Assistants Total	---	---
Laboratory	10	70
<u>Licenses Retired</u>		
Dental	46	155
Dental Hygienists	18	81
<u>Licenses Reinstated</u>		
Dental	7	12
Dental Hygienists	2	17
<u>Licenses/Registrations Renewed</u>		
Dental	2,907	11,778
Dental Hygienist	2,264	8,899
Laboratory	10	974
<u>Individuals Examined</u>		
N20 Monitoring	421	972
Jurisprudence (DDS & RDH)	341	1,137
Radiology	1,986	4,086

Ms. Sanders provided a report on the Dental Assistant Test Summary for September 1, 2004 through November 15, 2004. She also stated that 35 individuals who have applied for, and received formal registration from the Board.

	<u>Taken</u>	<u>Passed</u>	<u>Pass Rate</u>
Jurisprudence	127	123	96%
Infection Control	138	109	79%
Radiology	850	506	60%

b. Enforcement Division Report.

Mr. Ablon reported that the Agency had 899 jurisdictional cases and 1,079 investigations were completed.

Closed/Dismissed Cases for October 31, 2004:	41
Closed/Dismissed Cases for September 30, 2004:	44
Closed/Dismissed Cases for August 31, 2004:	59

c. Administration Division Report.

Ms. McPherson provided the following report:

(1) FY 2005 Budget Report:

Legislative Appropriations (all strategies)	\$1,522.597
Plus: Additional Funds Received for IT Consolidation	27,733
Less: Amount for Texas Online	-90,132
Less: Transfer to Health Professions Council (HPC)	-10,666
Total Operating Budget:	<u>\$1,449.532</u>

Comparison of Expenditures to Revenue Collected (9/1/04 – 10/31/04):

Total expenditures for the first two months of the Fiscal Year total:	\$ 287.620
Total revenue	<u>\$ 533.594</u>
Excess of Revenue over Expenditures:	<u>\$ 245.974</u>

(2) LBB Performance Report for FY 2004:

(A) 4th Quarter:

	<u>4th Quarter</u>		
<u>Measure</u>	<u>2004 Target</u>	<u>4th Quarter</u>	<u>YTD Performance</u>
Measure on Complaints Resolved	603 Resolved	353 Resolved	1,096 Resolved
Measure on Peer Assistance Program	64 Participants	0 New Participants	41 Participants
Measure on Licenses Issued: Dentists	420	257	456
Measure on Licenses Renewed: Dentists	11,479	2,907	11,778
Measure on Licenses Issued: Dental Hygienists	461	289	474
Measure on Licenses Renewed: Dental Hygienists	8,334	2,264	8,899
Measure on Avg. Time for Complaint Resolution	275 days	599 days	468 days
Measure on Avg. License Cost/Individual: Dentist	\$4.65	\$4.16	\$4.52
Measure on Avg. License Cost/Facility (Dental Labs)	\$7.99	\$6.47	\$7.70
Measure on Avg. License Cost/Individual: Dental Hygienist	\$3.35	\$3.36	\$3.45

(B) Annual:

<u>Annual</u>		
<u>Measure</u>	<u>2004 Target</u>	<u>YTD Performance</u>
Measure on Complaint Resolution	15.37%	22.50%
Measure on Licensing and Examination % Dentists/No Violations	99.40%	99.60%
Measure on Licensing and Examination % of Licensees who Renew Online	12.00%	13.10%
Measure on Licensing and Examination % Individual Licenses Issued Online	0.00%*	0.00%*

* - Not reportable in FY 2005 but will be in April of FY 2006.

(C) All Measures:

<u>All Measures</u>			
<u>Measure</u>	<u>Targeted Performance</u>	<u>Actual Performance</u>	<u>Attained or Exceeded</u>
<u>Strategy: Enforcement</u>			
Percent of complaints resolved resulting in disciplinary action	15.37%	25.50%	✓
Recidivism Rate for those receiving disciplinary action	12.00%	16.40%	
Percent of complaints resolved within six months	50.00%	31.00%	
Complaints resolved	603	1,096	✓
Average time for complaint resolution	275	468.1	
Average cost per complaint resolved	\$450	\$291.52	✓
Jurisdictional complaints received	793	899	✓
<u>Measure</u>	<u>Targeted Performance</u>	<u>Actual Performance</u>	<u>Attained or Exceeded</u>
<u>Strategy: Peer Assistance</u>			
Recidivism rate for peer assistance programs	5.00%	0.00%	
One-year completion rate for peer assistance programs	90.00%	0.00%	
Number of licensed individuals participating in a Peer Assistance Program	64	41	
Number of students participating in a Peer Assistance Program	1	1	✓
<u>Measure</u>	<u>Targeted Performance</u>	<u>Actual Performance</u>	<u>Attained or Exceeded</u>
<u>Strategy: Licensing</u>			
Percent of licensees with no recent violations: Dentist	99.40%	99.60%	✓
Percent of licensees with no recent violations: DH	99.40%	100.00%	✓
Percent of licensees who renew online	12.00%	13.10%	✓
Percent of new individual licenses issued online	Will not be counted until FY 05		--
Number of new licenses issued to individuals: Dentist	420	456	✓
Number of new licenses issued to individuals: DH	461	474	✓
Number of licenses renewed (individuals): Dentists	11,479	11,778	✓
Number of licenses renewed (individuals): DH	8,334	8,899	✓
Number of individuals examined: Dentist	530	569	✓

All Measures (Continued)			
<u>Measure</u>	<u>Targeted Performance</u>	<u>Actual Performance</u>	<u>Attained or Exceeded</u>
<u>Strategy: Licensing (Continued)</u>			
Number of individuals examined: DH	2,000	1,540	✓
Average licensing cost per individual license issued: Dentist	\$ 4.65	\$ 4.52	✓
Average licensing cost per individual license issued: DH	\$ 3.35	\$ 3.45	
Average licensing cost per facility license issued (Labs)	\$ 7.99	\$ 7.70	✓
Percentage of new individual licenses issued within 10 days: Dentist	99%	99%	✓
Percentage of new individual licenses issued within 10 days: DH	99%	100%	✓
Percentage of individual licenses renewals issued within 7 days: DDS	100%	100%	✓
Percentage of individual licenses renewals issued within 7 days: DH	100%	100%	✓
Average cost per exam administered: Dentist	\$ 4.58	\$ 2.94	✓
Average cost per exam administered: DH	\$19.75	\$ 7.89	✓
Total number of individuals licensed: Dentist	14,400	14,209	
Total number of individuals licensed: DH	10,468	10,400	
Total number of business facilities licensed (Labs)	1,078	1,102	✓
Pass Rate	85%	94%	✓
Out of 33 Reportable Measures, the SBDE Attained or Exceeded 23 Measures (✓) – 70% Achievement Rate			

d. LEGAL DIVISION REPORT.

(1) Discuss and Consider Approval of State Office of Administrative Hearings (SOAH) Settlement Orders.

Mr. Houston read through the Agreed Settlement Orders that came as a result of State Office of Administrative Hearings (SOAH) action.

SBDE 04-640-0414; 02-320-0124CC; 02-774-0718FJ; 02-858-0819FG
SBDE 02-607-0507; 02-622-0513; 03-045-0916; 03-216-1119

A MOTION WAS MADE BY MR. GARCIA, SECONDED BY DR. STUBBS TO APPROVE THE SETTLEMENT ORDERS FROM SOAH ACTION. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

(2) Proposals for Decision.

Mr. Houston noted for the record that there were no Proposals for Decision to be heard at this meeting.

(3) Proposed Board Orders (PBOs).

04-310-1229	04-961-0715
02-444-0305	04-731-0505
03-589-0402	03-998-0822
04-522-0308	04-664-0419

A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO APPROVE THE PROPOSED BOARD ORDERS AS LISTED ABOVE. (FOR – 12 / OPPOSED - 0) MOTION CARRIES.

(4) Informal Settlement Conference (ISC) Settlement Orders.

Mr. Houston read through Settlement Order 99-613-0827WT from the February 2003 ISC, Panelists: Drs. Starr, McDonald and Ms. Waugh.

A MOTION WAS MADE BY MR. STUBBS, SECONDED BY MR. WETHERBEE TO APPROVE SETTLEMENT ORDER 99-613-0827WT FROM THE FEBRUARY 2003 ISC. (FOR – 11 / OPPOSED – 0 / ABSTENTIONS - 1) MOTION CARRIES

Mr. Houston read through Settlement Order 03-314-1231 from the October 2003 ISC, Panelists: Drs. McDonald, Villarreal and Ms. Stine.

A MOTION WAS MADE BY DR. TIPPIT, SECONDED BY MS. JUBA TO APPROVE SETTLEMENT ORDER 03-314-1231 FROM THE OCTOBER 2003 ISC. (FOR – 9 / OPPOSED – 0 / ABSTENTIONS – 3) MOTION CARRIES

Mr. Houston read through the Settlement Orders from the June 2004 ISC, Panelists: Dr. McDonald, Ms. Allen and Ms. Stine.

03-039-0916

03-800-0613

A MOTION WAS MADE BY MR. WETHERBEE, SECONDED BY MR. GARCIA TO APPROVE SETTLEMENT ORDERS FROM THE JUNE 2004 ISC. (FOR – 7 / OPPOSED – 2 / ABSTENTIONS – 3) MOTION CARRIES

Dr. Irons noted for the record that Dr. Malik and Ms. McKibben were opposed in the last vote.

Mr. Houston read through the Settlement Orders from the July 2004 ISC, Panelists: Drs. Tippit, Stubbs, and Ms. Juba.

02-647-0522

02-566-0423

A MOTION WAS MADE BY DR. STRUNK, SECONDED BY MS. MCKIBBEN TO APPROVE SETTLEMENT ORDERS FROM THE JULY 2004 ISC. (FOR – 9 / OPPOSED – 0 / ABSTENTIONS – 3) MOTION CARRIES

Mr. Houston read through the Settlement Orders from the October 2004 ISC, Panelists: Dr. Tippit, Strunk and Mr. Wetherbee.

04-901-0621

02-286-0111

04-546-0312

04-160-1104

04-821-0528

04-124-1020

02-741-0710; 03-595-0407

03-424-0210

02-227-1212; 03-469-0218

03-232; 03-529; 03-558; 04-276

03-517-0305; 03-570-0326; 04-164-1104

03-375-0123; 04-321-1231; 04-560-0317

A MOTION WAS MADE BY DR. STUBBS, SECONDED BY DR. MCDONALD TO APPROVE SETTLEMENT ORDERS FROM THE OCTOBER 2004 ISC. (FOR – 9 / OPPOSED – 0 / ABSTENTIONS – 3) MOTION CARRIES

(5) Staff Informal Settlement Conference Settlement Orders.

Mr. Houston read through the Settlement Orders from the **July 2004 Staff Informal Settlement Conference**.

Panelist: Dr. Stubbs.

03-438-0211; 03-312-1231; 03-296-1230 03-548-0318

**A MOTION WAS MADE BY DR. MCDONALD, SECONDED BY DR. TIPPIT TO APPROVE SETTLEMENT ORDERS FROM THE JULY 2004 STAFF INFORMAL SETTLEMENT CONFERENCE.
(FOR – 11 / OPPOSED – 0 / ABSTENTIONS – 1) MOTION CARRIES**

(5) Legal Division Report.

Mr. Houston submitted the following statistics listed below as part of his Fourth Quarter Report:

<u>Fiscal Year Filed</u>	<u>Active Cases in the Legal Division</u>
1998	1
1999	6
2000	20
2001	34
2002	56
2003	242
2004	206
2005	1
Total:	566 (As of November 1, 2004)

Cases Closed by the Legal Division in October 2004:	23
Cases Received by the Legal Division from the Enforcement Division in October 2004:	19
Cases Returned to the Enforcement Division from the Legal Division in October 2004:	2

I. Informal Settlement Conferences

October 7-8, 2004 Informal Settlement Conference (ISC)

November 4-5, 2004 Staff ISC

- A. 48 Cases (33 Respondents)
- B. Board Orders Proposed at Settlement Conferences – 30
- C. Dismissals at Settlement Conferences – 12
- D. Tabled for Future Consideration/Further Action – 5
- E. Referrals to the State Office of Administrative Hearings (SOAH): 1

II. Initial Proposed Board Orders (PBO's)

- A. 12 PBO's dispatched since last Board Meeting (August 27, 2004)
- B. 8 PBO's received since last Board Meeting (August 27, 2004)

III. Legal Case Closures

- A. 57 Cases since last Board Meeting (August 27, 2004)

IV. SOAH Actions

- A. 1 Proposal For Decision (3 Cases) issued since last Board Meeting (August 27, 2004)
- B. 13 Cases filed at SOAH since last Board Meeting (August 27, 2004)
- C. 32 Total Cases filed under prosecution at SOAH
(8 Cases under Board Consideration at November 19, 2004 Meeting, 24 Cases Remaining)

V. Other Legal Issues

- A. 38 Board Order Cases projected to be resolved by action of the Board, November 19, 2004
- B. As of 11/19/04, the projected number of cases in the Legal Division is approximately 547.

VI. Future Activity

- A. Board Informal Settlement Conference – December 2-3, 2004
- B. Staff Informal Settlement Conferences – December 9, 16-17, 2004

Case Statistics

Total Number of Cases Heard at Settlement Conferences:	213
Total Number of Cases Disposed of by Board Order:	277
Total Cases Resolved by PBO:	107
Total Cases Resolved by Informal Settlement Conference	85
Total Number of Resolved Contested Cases (SOAH)	<u>85</u>
Total:	277

(6) Report of Liaison to Legal Division for SOAH Resolution.

Mr. Garcia reported that there were 90 cases filed at SOAH during the last fiscal year and more needs to be done at SOAH than we are doing.

The Presiding Officer called for a recess at 11:30a.m. The Board resumed business at 11:40a.m. A roll call was conducted and it was noted for the record that a quorum was present.

10. DECLARATIONS FROM BOARD MEMBERS INTERESTED IN SERVING AS SECRETARY OF THE BOARD.

Dr. Irons covered the history of the election process and the selection of Board Secretary. He further explained that an individual who cares to seek the Office of Secretary of this Board will declare they are interested in serving as the Secretary. Formal nominations will be held at the next TSBDE Board Meeting on January 14, 2005. At that Board Meeting, someone will specifically nominate that individual, or individuals who care to seek the position of Board Secretary.

Immediately following that there will be a secret ballot vote. Votes will be collected and counted by TSBDE Executive Director and General Counsel followed by an announcement of the newly elected Board Secretary. The term of the newly elected Secretary will begin at the end of the January 2005 Board Meeting. Dr. Irons then opened the floor for declarations from Board Members interested in serving as TSBDE Secretary.

Dr. Villarreal declared his availability and interest in serving as the TSBDE Secretary.

Dr. Stubbs declared his availability and interested in serving as the TSBDE Secretary.

11. EXECUTIVE SESSION.

The Board conducted a closed meeting to receive legal advice, discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific board employees pursuant to Sections 555.071 and 551.074, the Texas Open Meetings Act, codified as Chapter 551 of the Government Code.

12. EXECUTIVE DIRECTOR'S REPORT.

Mr. Schmidt's report focused on issues being addressed with the Legislature and Legislative Offices and the TSBDE's first quarter goals and objective.

The Agency provided follow-up materials to all legislative Offices during the months of October and November 2004. The purpose of the updates is two-fold: 1) to update each office with key contact personnel for the 79th Legislative Session and 2) to continue to gain support for the Compensation of Parity for the TSBDE staff. The emphasis being made to the Legislative staffs is that the employees of this Agency deserve parity of compensation with employees of other state agencies who have the same authority and/or job responsibilities. The justification for parity lies in the accomplishments of this Agency since 2002. The June 2002 recommendations from the Sunset Advisory Committee and the State Auditor have been addressed. As discussed at the August 2004 Meeting, this is the third tier of the organized effort to address the Legislative offices regarding the issue of parity.

The Senate Finance Committee met and heard testimony regarding the Legislative Appropriations Request, Exceptional Items and Agency Issue. Gary McDonald, D.D.S., Bobby D. Schmidt, M.Ed., and Carol McPherson gave testimony on behalf of the TSBDE. Dr. McDonald emphasized the Agency's Performance Measures and the need for compensation of parity for the TSBDE staff. The questioning from the Committee centered on the amount of dollars the Agency collects vs. the Agency's appropriate budget and license fee structure. Senator Steve Ogden, Chair, Senator Jane Nelson, and Senator Gonzalo Barrientos gave favorable comments regarding the TSBDE.

A Conference entitled, "Legislative Communications for the 79th Legislative Session" was held on October 7, 2004. The Lyndon B. Johnson School of Public Affairs, the University of Texas at Austin, and Strategic Partnerships, Inc, sponsored the conference. J. Kevin Irons, D.M.D. and Bobby D. Schmidt, M.Ed. attended on behalf of the TSBDE. Topics included, "Government Organization and Report", "The Role of Boards in the Legislative Process", "Budget Priorities & Challenges from State Leadership's Perspective", "Working with the Legislature", "Working with Legislative Staff", and "Working with Legislators throughout the Year". Speakers included Senator Steve Ogden, Chair, Senate Finance Committee; Senator Judith Zaffirini, Vice Chair, Senate Finance Committee; Representative Talmadge Heflin, Chair, House Appropriations Committee, Representative Jim Pitts, Chair House Appropriations Subcommittee on Education and Co-Chair, Joint Committee for Oversight of Electronic Government; Representative Helen Giddings, Chair, House Business and Industry Committee; and Representative Warren Chisum, Vice Chair, House County Affairs Committee.

There were also presenters from the offices of the Governor, Lieutenant Governor, Speaker of the House, Legislative Budget Board, Senate State Affairs Committee, and the Health and Human Services Commission. The University of Texas Board of Regents, the Texas Department of Public Safety Board, and the Texas Youth Commission represented Governor appointed Board Members. Over 300 individuals attended the conference.

The first quarter goals and objectives are being completed (the first quarter ends November 30, 2004). The Administrative Division has revised the Legislative Appropriations Request, as needed; completed the FY 2004 financial close-out, completed the Annual Finance Report for FY 2004; tabulated the 4th quarter and FY 2004 performance measures and established a FY 2005 operating budget. In addition, several other reports have been submitted when requested. The Enforcement Division continues to monitor Priority 1 and Priority 2 cases, encourage and offer more training opportunities for the investigative staff and monitor the overall investigative workload. The Legal Division continues to implement the plan to dispose of cases in a logical and organized sequence. The Licensing Division has implemented the Dental Assistant Registration Program; launched two new examinations for dental assistants in the areas of infection control and jurisprudence; re-evaluated and implemented changes to dental assistant examination for radiology; and notified dental laboratory owners on the on-line renewal process.

Appropriate and fair compensation remains to be the critical issue to the Texas State Board of Dental Examiners and its employees. In order for this Agency to carry out its primary mission of protecting the public it is essential to maintain and support a team that possesses the necessary experience and expertise to handle complex issues in

the dental field. It is crucial that funding be approved to allow for the recruitment and retention of professional personnel. However, we must be able to compete on a level playing field with other state agencies, as well as outside forces. Comparable and fair compensation is an essential factor if we are to accomplish parity.

13. PRESIDING OFFICER'S REPORT.

Dr. Irons stated that attending the Legislative Conference Legislative Communications for the 79th Legislative Session was highly beneficial and encouraged Board Members to attend the next session when held.

14. PUBLIC COMMENTS.

Dr. Stubbs stated that the WREB Restorative Committee is in the process of reinstituting the requirement for preparation of bridges. Approximately a year or two ago, the requirement of gold casting was removed and included in the option two of any three of kinds of restoration, composite, alloy or gold. Most candidates opted to not to do gold, just do the amalgam and the composite. There was some concern that since so much of operative dentistry is preparation of bridges that the Committee is reinstituting that requirement be done on a typodont on a mannequin probably with one of the abutments to be a PVC preparation and the other a cast gold preparation. This will probably come about in the 2006 exam. There's been one field test at the dental school in Houston and another field test scheduled for the Spring.

15. ANNOUNCEMENTS.

Dr. Irons announced that the next Board Meeting will be held on January 14, 2005, with Committee Meetings being held on January 13th. The next Informal Settlement Conferences will be held on December 2-3, 2004 and panelists scheduled: Drs. Strunk, Villarreal, and Ms. Stine.

16. ADJOURN. A MOTION BY DR. STUBBS, SECONDED BY MR. WETHERBEE TO ADJOURN THE MEETING AT 12:39 P.M. (FOR – 12 / OPPOSED – 0) MOTION CARRIES.

- SIGNED -

- SIGNED -

DR. J. KEVIN IRONS
Presiding Officer
Texas State Board of Dental Examiners

DR. GARY W. MCDONALD
Secretary
Texas State Board of Dental Examiners

Date: January 14, 2005

Date: January 14, 2005